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Courtnay TAYLOR, Horacio Velarde, Miguel Roa and Adam Bunillo Alvarez, Plaintiffs-Appellants,

v.

TRACOR MARINE, INC., Intervening-Plaintiff,

v.

M/V CIUDAD DE LEON, her engines, tackles, motors, sails, etc., Defendant-Appellee.

Nos. 81-5147, 81-5219
Non-Argument Calendar.

United States Court of Appeals, Eleventh Circuit.

Aug. 23, 1982.

Seamen brought in rem action against vessel to obtain seamen's wages and penalty wages from their employer. The United States District Court for the Southern District of Florida, James Lawrence King, J., entered judgments awarding various sums to crew members and disbursed all funds in its registry, and crewmen appealed. The Court of Appeals held that the appeal was rendered moot by District Court's disbursement of the funds.

Dismissed.

1. Admiralty —28

A trial court's in rem jurisdiction may be furnished by a vessel, proceeds of judicial sale of the vessel, or security furnished in lieu thereof; however, where the res is no longer before court, its in rem jurisdiction is destroyed, and any appeal from its decision is rendered moot.

2. Admiralty —118.1

Seamen's appeal from adverse judgment in their in rem action against vessel to obtain wages was rendered moot by district court's disbursement of proceeds received from sale of the vessel.

3. Admiralty —113

Where, in seamen's in rem action against vessel to recover wages owed by owner, seamen failed to seek mandamus or file supersedeas bond, trial court was not required to preserve the res by requiring security.

Appeals from the United States District Court for the Southern District of Florida.

Before HILL, VANCE and HATCHETT, Circuit Judges.

PER CURIAM:

This case arose when certain crewmembers of the M/V CIUDAD DE LEON sued in rem against the vessel

to obtain seamen's wages and penalty wages from their employer. The appellants, all of whom were crewmembers, and Tracor Marine, which held a maritime lien on the vessel as a result of shipyard services, were intervening plaintiffs in that action. The vessel was seized and ultimately sold (to Tracor Marine), with the proceeds subject to priority liens.

The trial court conducted a hearing to determine the amount to which the crewmembers were entitled.[1] The court entered final judgments awarding various sums to the crewmembers and the remainder of the sale proceeds to Tracor Marine, and it authorized immediate execution and the disbursement of all funds in the registry of the court. The appellants filed a memorandum opposing the disbursement of the funds and an emergency motion to prevent the disbursement pending an appeal. The motion was denied and the funds were disbursed.

The appellants contend that the district court erred in its determination of the amounts due the seamen and in its release of funds to an inferior lienholder where the priority lienholders have exercised their right to appeal the order regarding entitlement to recovery. The appellee disputes these contentions and additionally challenges jurisdiction.

[1, 2] A trial court's in rem jurisdiction in a case such as this may be furnished by a vessel, the proceeds of the judicial sale of the vessel, or security furnished in lieu thereof. *See, e.g., Point Landing, Inc. v. Alabama*

[1]The claims of twelve intervening plaintiffs were settled and satisfied from the proceeds of the sale prior to trial.

Drydock & Shipbuilding Co., 261 F.2d 861, 864 (5th Cir. 1958) (proceeds in the registry of the court); *American Bank of Wage Claims v. Registry of the District Court of Guam*, 431 F.2d 1215, 1218-19 (9th Cir. 1970). However, where the res is no longer before the court, its in rem jurisdiction is destroyed, and any appeal from its decision is rendered moot. *E.g.*, *Parks v. B. F. Leaman & Sons, Inc.*, 279 F.2d 529, 532 (5th Cir. 1962); *The Manuel Arnus* 141 F.2d 585 (5th Cir.), *cert. denied sub nom. Compania Transatlantica v. The Manuel Arnus*, 323 U.S. 728, 65 S.Ct. 63, 89 L.Ed. 584 (1944); *Canal Steel Works, Inc. v. One Drag Line Dredge*, 48 F.2d 212 (5th Cir.), *cert. denied*, 284 U.S. 647, 52 S.Ct. 29, 76 L.Ed. 550 (1931); *American Bank of Wage Claims*, 431 F.2d 1215. The latter rule is dispositive of this case.[2]

[3] The appellants vigorously resisted the trial court's order to disburse all proceeds received from the sale of the M/V CIUDAD DE LEON, but they were unsuccessful at the trial court level and they did not seek extraordinary relief from this court to prevent

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[2]Had this case also involved claims in personam, jurisdiction might still lie. *See Treasure Salvors v. Unidentified Wrecked and Abandoned Sailing Vessel*, 569 F.2d 330 (5th Cir. 1978); *Inland Credit Corp. v. M/T BOW EGRET*, 552 F.2d 1148 (5th Cir. 1977).

disbursement.[3] Moreover, they did not file a supersedeas bond in order to obtain a stay upon appeal. The proceeds having been disbursed, any order which we might issue in this case would be an empty gesture. Consequently, this appeal is rendered moot and must be

DISMISSED.

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[3]The appellants contend that the trial court erred by not preserving the res by requiring the appellee to give security under Rule E(5)(a) of the Supplemental Rules for Certain Admiralty and Maritime Claims. However, they did not seek mandamus to require the trial court to take that action, and jurisdiction is not preserved by their allegation of error on appeal. Moreover, the removal of the res in this case has not been shown to be accidental, fraudulent, or improper within the holding of *The Rio Grande*, 90 U.S. (23 Wall.) 458 [23 L.Ed. 158] (1874). *See American Bank of Wage Claims*, 431 F.2d at 1219.

[FILED OCT 6 1982]

IN THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

No. 81-5147

COURTNAY TAYLOR, Et.Al.
Plaintiffs-Appellants,

vs.

TRACOR MARINE, INC.
Intervening Plaintiff

vs.

M/V CIUADAD DE LEON, ETC.,
Defendant-Appellee.

No. 81-5219

COURTNAY TAYLOR, Et.Al.
Plaintiffs-Appellants,

vs.

TRACOR MARINE, INC.
Intervening Plaintiff

vs.

M/V CIUADAD DE LEON, ETC.,
Defendant-Appellee.

Appeal from the United States District Court for the Southern District of Florida.

ON PETITION FOR REHEARING AND SUGGESTION FOR REHEARING EN BANC

(Opinion August 23, 1982, 11 Cir., 1982, ____ F.2d ____).

Before HILL, VANCE, and HATCHETT, Circuit Judges.

PER CURIAM:

(✓) The Petition for Rehearing is DENIED and no member of this panel nor Judge in regular active service on the Court having requested that the Court be polled on rehearing en banc (Rule 35, Federal Rules of Appellate Procedure; Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is DENIED.

( ) The Petition for Rehearing is DENIED and the Court having been polled at the request of one of the members of the Court and a majority of the Circuit Judges who are in regular active service not having voted in favor of it (Rule 35, Federal Rules of Appellate Procedure; Local Eleventh Circuit Rule 26), the suggestion for Rehearing En Banc is also DENIED.

( ) A member of the Court in active service having requested a poll on the reconsideration of this cause en

banc, and a majority of the judges in active service not having voted in favor of it, rehearing en banc is DENIED.

ENTERED FOR THE COURT:

/s/ James C. Hill
United States Circuit Judge

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO. 79-6074-Civ-JLK

CIVIL DIVISION

COURTNAY TAYLOR, HORACIO VELARDE, et al,
Plaintiffs,

vs.

TRACOR MARINE, INC.,
Intervening Plaintiff,

vs.

M/V CIUDAD DE LEON, et al,
Defendant.

MOTION FOR EMERGENCY HEARING

Plaintiffs move this Honorable Court for an Emergency Hearing in this cause and for good cause respectfully submit as follows:

1. Plaintiffs previously filed a Motion in this cause to withhold the disbursement of the funds which represent the vessel, pending an opportunity to appeal the case by the Seamen Plaintiffs.

2. At the time the Defendants submitted a Motion for Disbursement of funds, and the form Final Judgments, the Plaintiffs filed a Memorandum in Opposition, pointing

out to the Court that these Final Judgments were improper in that they disburse the funds and further did not include an award of interest, nor did it allow the Seamen Plaintiffs to file a Motion to Tax Costs.

3. Finally, the immediate disbursement of funds by the Clerk would deprive the Seamen Plaintiffs of the opportunity to appeal this matter, and if successful to collect on their appeal. Case Law has previously been filed on this point with the court.

WHEREFORE, Plaintiffs respectfully request an emergency hearing in this matter.

MEMORANDUM OF LAW

Plaintiffs respectfully refer this Honorable Court to the prior memoranda previously submitted in this issue and to the Rules of Civil Procedure applicable in this matter.

I HEREBY CERTIFY that a true copy of the foregoing has been hand-delivered to Reginald Hayden, Esquire, 100 N.E. 1st Avenue, Miami, Florida 33132, this 23rd day of January 1981.

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By _____
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